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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 DEUTSCHE BANK NATIONAL  
12 TRUST COMPANY, as Trustee for  
13 Long Beach Mortgage Trust 2006-  
14 WL1,

15 Plaintiff,

16 v.

17 PORFIRIO GARCIA; DOES 1 to 20,  
18 inclusive,

19 Defendants.

Civil No. 3:13-cv-1696-GPC-NLS  
**ORDER SUA SPONTE  
REMANDING CASE TO STATE  
COURT**

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20 **INTRODUCTION**

21 On March 1, 2012, plaintiff Deutsche Bank National Trust Company, as Trustee  
22 for Long Beach Mortgage Trust 2006-WL1 (“Plaintiff”), filed a complaint in the  
23 Superior Court of California, County of San Diego for unlawful detainer against  
24 defendant Porfirio Garcia (“Defendant”).<sup>1</sup> (ECF No. 1.) Plaintiff alleges that  
25 Defendant unlawfully continues in possession of a property to which Plaintiff claims  
26 rights superior to those of Defendant. On July 22, 2013, Defendant removed the matter  
27 to this Court, asserting this Court has jurisdiction based on the existence of a federal  
28 question.

After reviewing the pleadings filed in this case, and for the reasons set forth

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<sup>1</sup> San Diego Superior Court case number 37-2012-37581-CL-UD-NC.

1 below, this Court finds that it lacks subject matter jurisdiction over the Complaint and,  
2 therefore, **SUA SPONTE REMANDS** the matter to state court for all further  
3 proceedings.

## 4 **DISCUSSION**

### 5 **1. Legal Standard**

6 Federal courts are courts of limited jurisdiction. See Gould v. Mutual Life Ins.  
7 Co. v. New York, 790 F.2d 769, 774 (9th Cir. 1986). As such, a federal court cannot  
8 reach the merits of any dispute until it confirms its own subject matter jurisdiction. See  
9 Steel Co. v. Citizens for a Better Environ., 523 U.S. 83, 93-94 (1998). Thus, at anytime  
10 during the proceedings, a district court may sua sponte remand a case to state court if  
11 the court lacks subject matter jurisdiction over the case. 28 U.S.C. § 1447(c);  
12 Brockman v. Merabank, 40 F.3d 1013, 1015-16 (9th Cir. 1994).

13 Removal jurisdiction is governed by 28 U.S.C. § 1441 et seq. A state court  
14 action can be removed if it could have originally been brought in federal court.  
15 Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987). Thus, a party invoking the  
16 federal removal statutes must establish jurisdiction by demonstrating the existence of:  
17 (1) a statutory basis; (2) a federal question; or (3) diversity of the parties. See Mir v.  
18 Fosburg, 646 F.2d 342, 345 (9th Cir. 1980). District courts must construe the removal  
19 statutes strictly against removal and resolve any uncertainty as to removability in favor  
20 of remanding the case to state court. Boggs v. Lewis, 863 F.2d 662, 663 (9th Cir.  
21 1988).

22 The burden is on the removing party to demonstrate federal subject matter  
23 jurisdiction over the case. See Emrich v. Touche Ross & Co., 846 F.2d 1190, 1195  
24 (9th Cir. 1988). To remove an action based on the existence of a federal question, the  
25 complaint must establish either that federal law creates a cause of action alleged in the  
26 complaint or that the plaintiff's right to relief necessarily depends on the resolution of  
27 substantial questions of federal law. See Franchise Tax Bd. of Cal. v. Constr. Laborers  
28 Vacation Trust for S. Cal., 461 U.S. 1, 10 (1983). A plaintiff is the master of its

1 complaint, and federal question jurisdiction exists only when a federal question is  
2 presented on the face of a properly pled complaint. See Caterpillar, 482 U.S. at 392.  
3 As such, removal cannot be based on a counterclaim. Takeda v. N.W. Nat'l Life Ins.  
4 Co., 765 F.2d 815, 822 (9th Cir. 1985).

## 5 **2. Analysis**

6 Upon review of Defendant's Notice of Removal and the attached Complaint, this  
7 Court finds it appropriate to sua sponte remand the case to state court because the  
8 Notice of Removal and attached Complaint fail to establish a proper basis for this  
9 Court's subject matter jurisdiction. Defendant asserts federal question jurisdiction  
10 exists for three reasons. First, Defendant asserts that portions of California Civil Code  
11 Sections 1166 and 1179 (the unlawful detainer statutes) violate the Equal Protection  
12 Clause of the United States Constitution. Second, Defendant asserts "this case involves  
13 conduct pertaining to the Fair Debt Collection Act (FDCPA) pursuant to *15 USC 1692*  
14 *et seq.* further constituting federal questions ripe for review." Third, Defendant asserts  
15 he "is a citizen of California and further allege[s] that he has been deprived of a liberty  
16 interest protected under the due process clause."


17 In its Complaint, Plaintiff asserts a single cause of action for unlawful detainer.  
18 Plaintiff prays for a judgment of unlawful detainer and for immediate possession of the  
19 property. Notwithstanding Defendant's vague assertion that this Complaint gives rise  
20 to a question under the U.S. Constitution and under the FDCPA, the Court finds no  
21 federal question appears on the face of the Complaint. The Court further finds that  
22 nothing in the Complaint indicates that Plaintiff's right to relief necessarily depends  
23 on the resolution of substantial questions of federal law, as the unlawful detainer claim  
24 alleged rests exclusively on California state law. Plaintiff's constitutional and FDCPA  
25 claims may very well constitute defenses and/or counterclaims. Defenses and  
26 counterclaims that implicate a federal question, however, are not sufficient to confer  
27 subject matter jurisdiction over a complaint that rests squarely on state law.  
28 Accordingly, the Court finds it does not have subject matter jurisdiction over this case

1 and therefore finds it appropriate to sua sponte remand the matter to state court./

2 **CONCLUSION AND ORDER**

3 Based on a careful review of Defendant's Notice of Removal, the Complaint, and  
4 the applicable law, and for the reasons stated above, **IT IS HEREBY ORDERED** that  
5 this case is **SUA SPONTE REMANDED** to state court.

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7 DATED: July 30, 2013

8   
9 HON. GONZALO P. CURIEL  
United States District Judge